

January 5, 2023

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street SW, Stop 5009
Washington, DC 20536-5009
Email: ICE-FOIA@dhs.gov

Senior Director of FOIA Operations
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655
Email: foia@hq.dhs.gov



**RE: FOIA Request, COVID-19 Antiviral Drug Provision to
Immigration and Customs Enforcement (ICE)**

EXPEDITED PROCESSING AND FEE WAIVER REQUESTED

SUBMITTED VIA EMAIL

Dear Freedom of Information Act Officer:

The American Civil Liberties Union (ACLU) submits this Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*, request for records relating to the provision of COVID antiviral treatments to Immigration and Customs Enforcement (ICE). The ACLU also requests a fee waiver, pursuant to 5 U.S.C. § 552 (a)(4)(A)(iii), and expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(E). The justification for the fee waiver and expedited processing are set out in detail following the request.

I. Background

On March 1, 2022, at the State of the Union address, President Biden announced that the Administration’s “Test to Treat” initiative whereby persons testing positive for COVID-19 can receive Pfizer’s antiviral oral medication (Paxlovid) “on the spot at no cost.”¹ Paxlovid is a COVID-19 antiviral oral medication made of two drugs, nirmatrelvir and ritonavir.² President Biden stated that the Administration has “ordered more pills than anyone in the world has[,]” and that “Pfizer is working overtime to give us a million pills this month and more than double that next month.”³ Although Paxlovid was initially limited in availability, the medication is “now in ample supply.”⁴

Paxlovid is effective in the treatment of COVID-19. Early clinical trials found that Paxlovid reduced the risk of hospitalization and death by 89 percent for unvaccinated people at high risk for severe COVID-19.⁵ A recent study released by the Centers for Disease Control and Prevention (CDC) also underscores the continued efficacy of the antiviral drug: for people diagnosed with COVID-19, including those with previous infection and vaccination, those prescribed Paxlovid had a 51 percent lower hospitalization rate than those not prescribed the drug.⁶ Paxlovid is also shown to reduce the risk of Long COVID: a recent study showed that patients who took the drug within five days of testing positive for COVID were 26 percent less likely to have long-term post-COVID symptoms.⁷



ICE should require Paxlovid to be available at all detention facilities. The Centers for Disease Control and Prevention’s (CDC) COVID-19 guidance for correctional and detention facility notes that “[e]ffective treatments are now widely available and must be started within a few days after symptoms develop to be effective.” Facilities are instructed to “[s]upport timely treatment for those eligible.”⁸ These treatments include antiviral treatments, such as Paxlovid, Remdesivir (Veklury), and Molnupiravir (Lagevrio).⁹

However, the only medical treatment suggested and recommended in ICE’s latest Pandemic Response Requirements, released on November 1, 2022, are monoclonal antibodies, not antiviral treatments. Monoclonal antibody treatments are distinct from antiviral drugs and the FDA has withdrawn its authorization for their use for treatment of COVID-19.¹⁰

To provide the public with information about ICE’s response to COVID-19 and provision of COVID-19 antiviral drugs to people detained in its custody, the ACLU seeks such information through this FOIA request.

Definitions

For purposes of this request, the terms listed below are defined as follows:

“COMMUNICATIONS” means any transmittal of information from one person or entity to another by any means, including letters, correspondence, notes, memoranda, records, reports, papers, facsimiles, electronic mail (whether to, from, copied or blind copied), electronic mail generated from a hand held personal device including a Blackberry or iPhone, instant messaging, electronic mail generated from business or personal email accounts, internet relay chat, news group, group or collaboration servers, electronic bulletin boards, electronic discussion boards, dictation tapes, video recordings, audio recordings, digital recordings, memoranda, telegrams, telecopies and telexes, teleconference, collaboration servers (including share point servers), web-based or software virtual meetings including Web-X and any other meeting software and share

point servers, and oral contact such as face-to-face discussions or meetings, telephone conversations, and voicemail messages.

“COVID-19” means the novel coronavirus disease that appeared in 2019, including both the novel coronavirus, the disease caused by that virus, any variants, and any terms commonly used to describe the current public health situation surrounding the disease. The term “COVID-19” should also be construed to include all the other commonly understood iterations of the term, including but not limited to COVID, COVID19, COVID2019, SARS-nCoV-2, etc.



“COVID-19 ANTIVIRAL DRUGS” refers to any antiviral drug approved by the Food and Drug Administration (including on an Emergency Use Authorization basis), in order to treat people diagnosed with COVID-19. As that term is used here, it includes Paxlovid, Remdesivir (Veklury), and Molnupiravir (Lagevrio).

“DHS” means the Department of Homeland Security, and any components, subcomponents, offices, or personnel therein.

“DOCUMENTS” has the same scope used in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall encompass every writing or record of every type and description and every tangible thing that is or has been in the possession, custody, or control of the federal agency or agencies that are the subject of this request and their employees, to which they have access, or of which they have knowledge, including, but not limited to, newspaper articles, magazine articles, news articles, correspondence, letters, contracts, files, electronic mail, memoranda, stenographic notes, handwritten notes, drafts, studies, publications, books, pamphlets, catalogs, purchase orders, receipts, advertisements, direct mail solicitations, point-of-sale and point-of-purchase materials, notebooks, diaries, models, devices, pictures, photographs, films, audiotapes, videotapes, computer records, voice recordings, maps, reports, surveys, minutes, data compilations, and statistical compilations, regardless of whether a particular DOCUMENT is privileged or confidential, and regardless of the form of storage (including, but not limited to, paper, microfiche, magnetic tape, magnetic disk (hard disk or floppy disk), CD-ROM, DVD, optical disk, or electronic storage device).

“HEALTH CARE” means the provision of care to address and treat the medical, dental, or mental health needs of a person, whether those needs arise as a result of injury, illness, disease, or other trauma; or care provided for diagnostic or preventative purposes.

“HEALTH CARE STAFF” means all persons employed by ICE or THIRD-PARTY CONTRACTORS to provide HEALTH CARE to persons in ICE detention facilities, either on a permanent or temporary basis.



“ICE” means Immigration and Customs Enforcement, and any components, subcomponents, offices, or personnel therein.

“IHSC” means the U.S. Immigration and Customs Enforcement Health Services Corps.

“IMMIGRATION DETENTION FACILITY” means Service Processing Centers, Contract Detention Facilities, Family Residential Facilities, Intergovernmental Service Agreement (IGSA) Facilities, Dedicated Intergovernmental Service Agreement (DIGSA) Facilities, Intergovernmental Agreement (IGA) Facilities, and any other facilities where individuals may be held in ICE custody for 72 hours or more.

“THIRD-PARTY CONTRACTOR” means any entity that provides services or personnel to ICE detention facilities.

“TREATMENT COURSE” means the authorized dosage and duration of treatment with medication for a specified health condition. For example, the treatment course authorized by the FDA for Paxlovid for COVID-19 patients is 300 mg of nirmatrelvir and 100 mg ritonavir twice daily for five days.

Requested Records

The ACLU seeks the release of the following records, dated January 1, 2022, to the present. Please construe this as an ongoing FOIA request, so that any records that come into the possession of the agency prior to your final response to this FOIA request should also be considered within the request’s scope.

1. DOCUMENTS sufficient to show the following information:
 - a. The type of COVID-19 ANTIVIRAL DRUGS, and number of TREATMENT COURSES prescribed and provided to people detained in IMMIGRATION DETENTION FACILITIES, including by facility and date;
 - b. The type of COVID-19 ANTIVIRAL DRUGS, and number of TREATMENT COURSES available at each IMMIGRATION DETENTION FACILITY, including by facility and name of drug;
 - c. The number and type of COVID-19 ANTIVIRAL TREATMENT COURSES ordered by IMMIGRATION DETENTION FACILITIES, including by facility and date, including orders placed to the Department of Health and Human Services;
2. Any and all records related to COVID-19 ANTIVIRAL DRUGS and their



use, provision, availability, or prescription in IMMIGRATION DETENTION FACILITIES including policies, trainings, spreadsheets, protocols, guidelines, reports, letters, communications, or inquiries;

3. Any and all records related to COVID-19 ANTIVIRAL DRUGS and inclusion of requirements for their use or provision in ICE COVID-19 Pandemic Response Requirements or IHSC Directives, including emails, letters, communications, or inquiries;
4. Any and all records related to ICE's oversight or monitoring of IMMIGRATION DETENTION FACILITIES and the provision, prescription, or availability of COVID-19 ANTIVIRAL DRUGS;
5. Any and all records generated in response to media inquiries, public affairs purposes, or Congressional inquiries regarding the provision of COVID-19 ANTIVIRAL DRUGS or COVID-19 therapeutic treatment (including but not limited to talking points, quotes or statements provided to press, underlying data, memoranda, or letters);
6. Any and all records discussing, preparing, proposing, editing, or approving records responsive to Request 5.

The ACLU does not seek the names, register numbers, any information that could be deemed "Protected Health Information" as that term is used in the Health Insurance Portability and Accessibility Act ("HIPAA"), 45 C.F.R. Parts 160 and 164, Subparts A and E. To the extent that any responsive document contains names, register numbers, or personal health information, we ask that the portion of the document that contains personal information be redacted, with the remainder of the document produced unredacted.

With respect to the form of production, the ACLU requests that responsive records that exist in a machine-readable electronic format be produced in an electronic format; and that any documents that are maintained as spreadsheets, or are maintained in a database and exported therefrom, in the native Excel, csv, or similar spreadsheet electronic format. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF) in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

Fee Waiver Request

The ACLU requests that any fees associated responding to its FOIA

request be waived pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), fees should be waived or reduced if disclosure is (1) in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government” and (2) “not primarily in the commercial interest of the requester.” Disclosure in this case meets both of these tests. The ACLU also requests a waiver or reduction of fees on the grounds that the ACLU qualifies as a “representative[] of the news media” and the records are not sought for commercial use. See 5 U.S.C. § 552(a)(4)(A)(ii)(II).

1. *Disclosure is in the public interest as it is likely to contribute significantly to the public’s understanding of the operations and activities of government.*



No event in recent memory has so suddenly changed the day to day life for nearly all Americans than the COVID-19 epidemic. Nearly every institution, economic sector, and government agency made significant changes in response to the pandemic. The disclosure of this information, therefore, will inform the public about the operations and activities of DHS and ICE in response to the global pandemic. Throughout the COVID-19 pandemic, ICE detention centers have been among the most dangerous places in the United States. As of this date, ICE has reported 52,247 people in its custody have tested positive for COVID-19.¹¹ COVID-19 infection rates in ICE detention facilities have reached as high as 20 times greater than in the general public.¹²

The detention and treatment of ICE detainees, particularly with respect to management of COVID-19, is of great concern to the public. On multiple occasions, members of Congress have called attention to ICE’s failure to adequately provide protections against, and treatment for COVID-19 to people detained in its custody. Members of the Senate have specifically called upon ICE to improve the availability of COVID-19 antiviral drugs, including Paxlovid.¹³ As they noted, “individuals in congregate settings, like immigration detention, are widely recognized to be at higher risk of contracting COVID-19. . . . This discrepancy can only be addressed with affirmative, comprehensive changes . . . to improve the availability of vaccines, testing, and therapeutics. We write to urge you to make those changes.”¹⁴ The U.S. Government Accountability Office has also studied COVID-19 in ICE detention facilities, noting that “[d]etention facilities can present a challenging environment to manage the risk of transmission of infectious diseases, including COVID-19.”¹⁵

The media has extensively covered COVID-19 in ICE detention facilities,¹⁶ including ICE’s failure to provide COVID-19 vaccines and booster shots to people in custody.¹⁷

Given the significant attention to COVID-19 in ICE detention facilities, the

requested records will contribute significantly to the public's understanding of ICE's provision of COVID-19 antiviral drugs in detention facilities. Insufficient information is publicly available regarding the issue in this Request, so the records sought are certain to contribute significantly to the public's understanding of ICE's provision of COVID-19 antiviral drugs in detention facilities.

2. *Disclosure is not primarily in the commercial interest of the ACLU.*

Second, the ACLU is not filing this request to further a commercial interest. The ACLU is a 501(c)(3) nonprofit organization and therefore has no commercial interest. The ACLU intends to make any relevant information obtained through this FOIA available to the public. *See* 6 C.F.R. § 5.11(k)(1)(ii). The ACLU publishes newsletters, news briefings, right-to-know handbooks, and other materials that are disseminated to the public. These materials are widely available to everyone, including tax-exempt organizations, not-for-profit groups, law students, and faculty, for no cost or for a nominal fee.



The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, www.aclu.org. The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU website also includes many features on information obtained through FOIA requests. For example, the ACLU's "Predator Drones FOIA" webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU's FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves.

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, in February 2017 the ACLU produced an analysis of documents released in response to a FOIA request about the TSA's behavior detection program. The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the ACLU plans to disseminate the information disclosed as a result of this Request to the public at no cost.

3. *The ACLU also qualifies for a fee waiver because it is representative of the news media and the records are not sought for commercial use.*

The ACLU is also entitled to a waiver of search fees on the grounds that the ACLU qualifies as a "representative of the news media" and the records are



not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also Nat’l Sec. Archive v. U.S. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 30 n.5 (D.D.C. 2004) (finding non-profit public interest group to be “primarily engaged in disseminating information”).

Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. For example, the ACLU regularly publishes *ACLU Magazine* that reports on and analyzes civil liberties-related current events. The magazine is disseminated to over 950,000 households. The ACLU also publishes regular updates and alerts via email to approximately four million subscribers (both ACLU members and nonmembers). These updates are additionally broadcast to 5.9 million social media followers (members and nonmembers). The magazine, email, and social-media alerts often include descriptions and analysis of information obtained through our FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests. Similarly, ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee.

The ACLU also regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties. The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>.

Underscoring this point, courts have found that other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU's are "representatives of the news media" as well. *See, e.g., Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Defense*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989); *Judicial Watch, Inc. v. U.S. Dep't of Justice*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).¹⁸



As a representative of the news media, the ACLU plans to analyze and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use. On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a "representative of the news media." A fee waiver would fulfill Congress's legislative intent in amending FOIA.¹⁹ Additionally, on account of these factors, the ACLU has not been charged fees associated with responding to FOIA requests on numerous occasions.²⁰

In sum, because disclosure of the requested documents is in the public interest and not primarily in the commercial interest of the requester, and because the ACLU is a representative of the news media, the ACLU is entitled to a total waiver of fees associated with this Request and should, in no event, be required to pay more than reasonable standard charges for document duplication. In the event that you decide not to waive the fees, please provide me with prior notice so that we can discuss arrangements.

Expedited Processing Request

The ACLU requests expedited processing of this Request pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgen[tly]" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II).

1. The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.

The ACLU is "primarily engaged in disseminating information" within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). As detailed supra, the ACLU has the ability and intention to widely disseminate the requested

information through a variety of sources, including reports, newsletters, news briefings, right-to-know handbooks, and other materials, to the public at no cost. Indeed, obtaining information about government activity, analyzing it, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU's work and are among its primary activities. *See ACLU v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information").

Moreover, as mentioned above, the ACLU intends to distribute the information obtained through this FOIA request via the ACLU website and/or other means available to us.



2. *The records sought are urgently needed to inform the public about actual or alleged government activity.*

The requested records are also urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 28 C.F.R. § 16.5(e)(1)(ii). Specifically, the requested records pertain to the provision of potentially lifesaving COVID-19 antiviral drugs to those in ICE detention custody. As described *supra*, this is a matter of widespread media and public interest, and the requested records will inform the public concern of this activity. 5 U.S.C. § 552(a)(6)(E)(i)(I). Yet relatively little is known about ICE's requests for and provision of COVID-19 therapeutics to detained persons who are testing positive. This request will educate the public about the government's actions in the face of this crisis.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

* * * * *

Pursuant to applicable statutes and regulations, we expect a determination regarding expedited processing within ten (10) days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 28 C.F.R. § 16.5(e)(4).

Thank you for your prompt attention to this Request. We look forward to your reply to this Request within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If this Request is denied in whole or part, we ask that you justify all deletions by reference to specific exemptions of the FOIA. We expect the

release of all segregable portions of otherwise exempt material. We reserve the right to appeal a decision to withhold any information, or to deny a waiver of fees.

Please call Kyle Virgien at 202-393-4930 or email at kvirgien@aclu.org if you have any questions or wish to obtain further information about the nature of the records in which we are interested. Please furnish the applicable records via email (kvirgien@aclu.org).

If the records are not in an electronic format, and must be sent via U.S. Mail, please send to the following address. Our offices are not fully reopened due to the pandemic; if any responsive records are sent by U.S. Mail, please call or email:



Kyle Virgien
ACLU National Prison Project
39 Drumm St.
San Francisco, CA 94111

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eunice Cho".

Eunice Cho
Sr. Staff Attorney
ACLU National Prison Project

A handwritten signature in blue ink, appearing to read "Kyle Virgien".

Kyle Virgien
Sr. Staff Attorney
ACLU National Prison Project

¹ The White House, *2022 State of the Union Address*, Mar. 1, 2022, at <https://www.whitehouse.gov/state-of-the-union-2022/>.

² FDA, *Fact Sheet for Healthcare Providers: Emergency Use Authorization for Paxlovid*, 2022, <https://www.fda.gov/media/155050/download>.

³ The White House, *2022 State of the Union Address*, Mar. 1, 2022, at <https://www.whitehouse.gov/state-of-the-union-2022/>.

⁴ White House, *Fact Sheet: Biden Administration Increases Access to COVID-19 Treatments and Boosts Patient and Provider Awareness*, Apr. 26, 2022, <https://www.whitehouse.gov/briefing->



[room/statements-releases/2022/04/26/fact-sheet-biden-administration-increases-access-to-covid-19-treatments-and-boosts-patient-and-provider-awareness/](https://www.aclu.org/room/statements-releases/2022/04/26/fact-sheet-biden-administration-increases-access-to-covid-19-treatments-and-boosts-patient-and-provider-awareness/).

⁵ Jennifer Hammond, et al., *Oral Nirmatrelvir for High-Risk, Nonhospitalized Adults with COVID-19*, 386 *New England J. Med.* 1397 (2022), <https://www.nejm.org/doi/full/10.1056/NEJMoa2118542>.

⁶ M.M. Shah, et al, *Paxlovid Associated with Decreased Hospitalization Rate Among Adults with COVID-19 — United States*, *MMWR Morb Mortal Wkly Rep.*, November 2, 2022, <http://dx.doi.org/10.15585/mmwr.mm7148e2>.

⁷ Yan Xie, Taeyoung Choi, Ziyad Al-Aly, *Nirmatrelvir and the Risk of Post-Acute Sequelae of COVID-19*, *MedRxiv* 2022, <https://www.medrxiv.org/content/10.1101/2022.11.03.22281783v1>; Pam Belluck, *Paxlovid May Reduce Risk of Long COVID in Eligible Patients, Study Finds*, *NY Times*, Nov. 7, 2022, <https://www.nytimes.com/2022/11/07/health/paxlovid-long-covid.html>.

⁸ CDC, *COVID-19, Homeless Service Sites & Correctional Facilities*, Nov. 29, 2022, <https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-correctional-settings.html>.

⁹ CDC, *COVID-19 Treatments and Medications*, Dec. 5, 2022,

<https://www.cdc.gov/coronavirus/2019-ncov/your-health/treatments-for-severe-illness.html>.

¹⁰ Joseph Choi, *FDA Pauses Authorization for Last Remaining COVID-19 Monoclonal Antibody Treatment*, *The Hill*, Nov. 30, 2022, <https://thehill.com/policy/healthcare/3756877-fda-pauses-authorization-for-last-remaining-covid-19-monoclonal-antibody-treatment/>; Food and Drug Administration, *FDA Announces Bebtelovimab Is Not Currently Authorized in Any U.S. Region*, Nov. 30, 2022, <https://www.fda.gov/drugs/drug-safety-and-availability/fda-announces-betelovimab-not-currently-authorized-any-us-region>.

¹¹ ICE, *COVID-19 ICE Detainee Statistics by Facility* (last updated Nov. 21, 2022), <https://www.ice.gov/coronavirus#detStat>.

¹² Isabelle Niu & Emily Rhyne, *4 Takeaways From Our Investigation Into ICE’s Mishandling of Covid-19* (updated Apr. 26, 2021), <https://www.nytimes.com/2021/04/25/video/immigration-detention-covid-takeaways.html?searchResultPosition=2>; *see also* Washington Post, *ICE Is the Superspreader Agency* (May 2, 2021), https://www.washingtonpost.com/opinions/ice-is-the-superspreader-agency/2021/05/01/eb079944-a9f2-11eb-8c1a-56f0cb4ff3b5_story.html

¹³ Sen. Ben Cardin, *Cardin, Murray, Colleagues Call on Prison and Immigration Officials to Improve Availability of COVID-19 Therapeutics Among Detainees*, Jul, 26, 2022, <https://www.cardin.senate.gov/press-releases/cardin-murray-colleagues-call-on-prison-and-immigration-officials-to-improve-availability-of-covid-19-therapeutics-among-detainees/>.

¹⁴ *Id.*

¹⁵ GAO, *Immigration Detention: ICE Efforts to Address COVID-19 in Detention Facilities*, Jun. 2021, <https://www.gao.gov/assets/gao-21-414.pdf>.

¹⁶ *See, e.g.* Seth Freed Wessler, *Fear, Illness and Death in ICE Detention: How a Protest Grew on the Inside*, *NY Times Magazine*, Jun. 4, 2020,

<https://www.nytimes.com/2020/06/04/magazine/covid-ice.html>; Isabelle Niu, Emily Rhyne and Aaron Byrd, *How ICE’s Mishandling of COVID-19 Fueled Outbreaks Around the Country*, *NY Times*, Apr. 25, 2021, <https://www.nytimes.com/video/us/100000007707896/immigration-detention-covid.html>; Maria Sacchetti, *COVID Infections Surge in Immigration Detention Facilities*, *Washington Post*, Feb. 1, 2022, <https://www.washingtonpost.com/national-security/2022/02/01/covid-migrants-ice-detention/>.

¹⁷ Maria Sacchetti, *ICE Has No Clear Plan for Vaccinating Thousands of Detained Immigrants Fighting Deportation*, *Washington Post*, Mar. 12, 2021, https://www.washingtonpost.com/immigration/ice-detainees-covid-vaccine/2021/03/12/0936ee18-81f5-11eb-81db-b02f0398f49a_story.html; Nicole Narea, *It’s Only a Matter of Time Before Omicron Spreads through ICE Detention*, *Vox.com*, Dec. 26, 2021, <https://www.vox.com/policy-and-politics/22848851/ice-immigration-detention-omicron-vaccine-boosters>; Amanda Holpuch, *A Suit Filed by the ACLU Accuses ICE Jailers of Denying Detainees Vaccines*, *NY Times*, Mar. 4, 2022, <https://www.nytimes.com/2022/03/04/world/aclu-ice-covid-vaccine-boosters.html>.

¹⁸ Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information and public education activities. *See, e.g., Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec.*

Archive, 880 F.2d at 1387; *see also Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

¹⁹ *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers for noncommercial requestors.’”) (citation omitted); *Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t. of Educ.*, 593 F. Supp. 2d 261, 268 (D.D.C. 2009) (“[FOIA’s] purpose . . . is to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.”) (internal quotation marks and citation omitted).

²⁰ For example, in August 2016, the ICE FOIA Office and DHS Privacy Office both granted fee waivers to the ACLU for a FOIA request seeking a DHS OIG super-memorandum and ICE’s response to that memorandum. Similarly, in March 2016, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about selected deaths in detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office. In July 2015, the ICE Office of the Principal Legal Advisor granted a fee waiver to the ACLU for a FOIA request seeking records about the use of segregation in ICE detention, reversing an incorrect denial of a fee waiver by the ICE FOIA Office.

